SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Foreword

DISCLAIMER

Updated: November 1997

Message from the Secretary of Labor

As Secretary of Labor, I have set five goals for the Department: first, to equip every working American with the skills to find and hold good jobs, with rising incomes throughout their lives; second, to help people move from welfare to work; third, to assure that working Americans enjoy secure pensions when they retire; fourth, to guarantee every American a safe, fair and equal opportunity workplace; and, fifth, to help working people balance work and family. The 180 labor laws and related regulations that the Department of Labor (DOL) administers advance these goals.

These laws and regulations cover a wide variety of workplace activities for nearly 10 million employers and well over 100 million workers. Most business men and women want to do the right thing. Few question the basic goals federal rules are meant to advance. But even for the best intentioned small business, it may be difficult to be familiar with the full range of relevant labor laws and regulations. This single publication represents another step toward making it less burdensome for small businesses to meet their regulatory obligations, so they can spend more of their time doing what they do best -- creating good jobs for American workers.

The Handbook is designed to provide general information on the laws and regulations that the Department enforces. My hope is that by providing clear and concise descriptions of the Departmental statutes most commonly applicable to small businesses, and by explaining how to obtain assistance from the Department in complying with them, small businesses and their workers will all be helped.

Alexis M. Herman

Secretary of Labor

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SMALL BUSINESS HANDBOOK:

Laws, Regulations and Technical Assistance Services

Overview

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Major Statutes and Regulations Administered by the Department of Labor

The main body of this Handbook consists of 28 discrete chapters describing the requirements of each of the major statutes enforced by the Department of Labor (DOL). The 28 chapters are organized by type of standard (i.e., Retirement and Health Benefit Standards; Safety and Health Standards; Wage, Hour and Other Workplace Standards; and Workplace Standards for Federally Funded or Assisted Contracts). Each chapter discusses: which employers or employees are covered by the statute; the statute's basic provisions and requirements; how to obtain information and assistance from DOL; penalties for non-compliance; and relation to state, local and other federal laws. Links are provided in each chapter to more detailed information available on DOL agencies' websites, such as the text of statutes, regulations (e.g., the Code of Federal Regulations), and interpretative bulletins. Users should refer to the regulations and other applicable materials to understand fully their responsibilities under each statute.

Please note that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, statutes designed to ensure non-discrimination in employment are generally enforced by the **Equal Employment Opportunity Commission**. Also, the Taft-Hartley Act regulating employer conduct with regard to employees in a wide range of areas is administered by the **National Labor Relations Board**. Please consult these agencies for further information on their requirements.

The Overview is organized differently than the main body of the Handbook in an effort to help new businesses ascertain which of DOL's statutes are most likely to apply to them. Thus, the first statutes discussed in the Overview apply to most employers, followed by those that apply to federal contractors, and finally by the statutes that apply to specific industries (i.e., agriculture, mining, construction, and transportation). Links are made within the Overview to the related, more detailed chapters in the Handbook so that employers may readily obtain additional information on the basic requirements of the statutes. In a few instances, statutes are discussed for which there are no corresponding chapters in the Handbook. In these cases, the user is directed to the appropriate DOL agency for additional information.

I. Requirements Applicable to Most Employers

A. Employee Benefit Plans

The **Employee Retirement Income Security Act (ERISA)**, which governs certain activities of most employers who have pension or welfare benefit plans, preempts many state laws in this area. ERISA is administered by DOL's Pension and Welfare Benefits Administration (PWBA). The statute also provides an insurance mechanism to protect retirement benefits

through a requirement that employers pay annual pension benefit insurance premiums to the **Pension Benefits Guaranty Corporation (PBGC)**, which is associated with the Department of Labor. Pension insurance information can be obtained by writing PBGC, Processing and Technical Assistance Branch, 1200 K Street, NW, Washington, DC 20006, or by calling (202) 326-4000.

ERISA covered **pension plans** must meet a wide range of fiduciary and reporting and disclosure requirements. PWBA's regulations define such concepts as what constitutes plan assets, what is adequate consideration for the sale of plan assets, and the effects of participants having control over the assets in their plans, among other things.

Under ERISA, **welfare benefit plans** also must meet a wide range of fiduciary, reporting, and disclosure requirements. There are also disclosure and notification requirements for the continuation of health care provisions that were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year. COBRA gives separated participants and beneficiaries an election to maintain, at their own expense, coverage under the employer's health plan for a limited period of time.

The **Health Insurance Portability Act of 1996** added several provisions to ERISA which are designed to provide participants and beneficiaries of group health plans with improved portability and renewability of coverage, as well as improved access to insurance and protection against discrimination on the basis of health status.

B. Safety and Health Requirements

The **Occupational Safety and Health Act (OSH Act)** , which is administered by DOL's Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those regulated under other federal statutes, e.g., the transportation industry). Many private employers are regulated through states operating under OSHA-approved plans.

It is the responsibility of employers to become familiar with job safety and health standards applicable to their establishments, to comply with the standards, and to eliminate hazardous conditions to the extent possible. Compliance may include ensuring that employees have and use personal protective equipment when required for their safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and practices.

Employers covered by the OSH Act are required to maintain workplaces that are safe and healthful. In doing so, they must meet certain regulatory requirements. Through regulations, OSHA promulgates safety and health standards, and frequently makes distinctions by type of industry.

- Safety standards include regulations covering hazards such as falls, explosions, electricity, fires, and cave-ins, as well as machine and vehicle operation and maintenance, etc.
- Health standards regulate exposure to a variety of health hazards through engineering controls, the use of personal protective equipment (e.g., respirators or hearing

protection), and work practices.

Where OSHA has not promulgated a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause [Section 5(a)(1)], which states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

When OSHA develops specific safety and health standards, the more general safety and health regulations originally issued under the following laws administered by the Department of Labor are superseded: the Walsh-Healey Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, and the Arts and Humanities Act.

Another generally applicable statute, the **Fair Labor Standards Act (FLSA)** prescribes the conditions under which minors (those under age 18) can safely work. These restrictions affect most private and public employment. This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA). **Child labor** provisions of the FLSA (non-agriculture) include restrictions on the hours of work and occupations for youths under age 16, and set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform.

C. Wage, Hour and Other Workplace Standards

The **Fair Labor Standards Act (FLSA)** prescribes minimum wage and overtime pay standards as well as recordkeeping and child labor standards for most private and public employment, including work conducted in the home (homework). This Act is administered by the Wage and Hour Division of DOL's Employment Standards Administration (ESA).

The minimum wage and overtime pay provisions of the FLSA require the following from employers of covered employees who are not otherwise exempt:

- As of September 1, 1997, employers must pay covered employees a minimum wage of not less than $5.15 an hour. Employers may pay employees on a piece-rate basis and, under some circumstances, may consider the tips of employees as part of their wages.
- Youths under 20 years of age may be paid a minimum wage of not less than $4.25 an hour during the first 90 consecutive calendar days of employment. with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.
- Although the Act does not place a limit on the total hours which may be worked by an employee who is at least 16 years old, it does require that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

In addition, the FLSA generally prohibits the performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. As noted above, child labor provisions (non-agriculture) of the FLSA include restrictions on the hours of work and occupations for youths under age 16.

Other generally applicable statutes which set workplace standards include:

- Under the **Immigration and Nationality Act (INA)**, foreign workers are allowed to work in the United States. The Employment Standards Administration's Wage and Hour Division has enforcement authority pertaining to the employment of nonimmigrant workers in four visa classifications: **D-1 (crewmembers)**; **H-1A (registered nurses)**; **H- 1B (workers employed in a "specialty occupation" or as a fashion model)**; and H-2A (workers employed in temporary agricultural jobs). Additionally, under the **INA**, employers must verify the identity and employment authorization of all employees, including foreign workers.

- The **Family and Medical Leave Act** requires employers of 50 or more employees (and all public agencies) to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or a family member. This Act is administered by the Wage and Hour Division of ESA.

- Veteran's reemployment rights ensure that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including those called up from the reserves or National Guard. The **Uniformed Services Employment and Reemployment Act**, which provides these rights, is administered by DOL's Office of the Assistant Secretary for Veterans' Employment and Training.

- Plant closings and layoffs may cause employers to become subject to the **Worker Adjustment and Retraining Notification Act (WARN)** which provides for early warning to employees of proposed layoffs or plant closings. The Employment and Training Administration can provide information on WARN, but since it does not have administrative or enforcement authority under WARN, it cannot provide specific advice or guidance with respect to individual situations.

- The **Employee Polygraph Protection Act (EPPA)** prohibits most use of lie detectors by employers on their employees. This Act is administered by the Wage and Hour Division of ESA.

- Garnishment of wages by employers is subject to regulation under the **Consumer Credit Protection Act**. This Act is administered by the Wage and Hour Division of ESA.

- The **Labor-Management Reporting and Disclosure Act (LMRDA)** (also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations. This Act is administered by DOL's Employment Standards Administration, Office of Labor-Management Standards (OLMS).

II. Requirements Applicable to Employers Because of the Receipt of Government Contracts, Grants or Financial Assistance

Non-discrimination and affirmative action requirements for Federal contractors are set under **Executive Order 11246**, **Section 503 of the Rehabilitation Act**, and the **Vietnam Era**

Veteran's Readjustment Assistance Act (38 U.S.C. 4212). These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability and veterans' status. ESA's Office of Federal Contract Compliance Programs (OFCCP) administers these programs.

Wage, hour, and fringe benefit standards are determined for employees of federal contractors under: the **Davis-Bacon and Related Acts** (for construction); the **Contract Work Hours and Safety Standards Act**; the **McNamara-O'Hara Service Contract Act** (for services); and the **Walsh-Healey Public Contracts Act** (for manufacturing). The Wage and Hour Division of ESA both makes the determination of the required wage and benefit rates and enforces the requirements under the various statutes. Safety and health standards are also issued under these Acts and are applicable to covered contractors, unless they have been superseded by specific standards issued by the Occupational Safety and Health Administration. *Contact your local **OSHA Office** for more detail on safety standards.*

III. Industry-Specific Requirements

A. Agriculture

Several safety and health standards issued and enforced by OSHA and the **Environmental Protection Agency** (e.g., pesticides) apply to this industry. In addition, several agriculture-specific programs are administered by the Employment and Training Administration and the Employment and Standards Administration's Wage and Hour Division.

Under the authority of the **Occupational Safety and Health Act** , OSHA has issued a number of safety standards that relate directly to the agricultural industry, including: field sanitation, overhead protection for operators of agricultural tractors, grain handling facilities, and guarding of farm field equipment and cotton gins. *Contact your local **OSHA Office** for more detail.*

The Immigration and Nationality Act (INA) requires that employers wishing to use nonimmigrant workers for temporary agricultural employment under the H-2A visa classification apply to the Employment and Training Administration for a labor certificate showing that there are not sufficient workers in the U.S. able, willing, qualified and available to do the work, and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the U.S.

The **Migrant and Seasonal Agricultural Worker Protection Act (MSPA)** requires that covered farm labor contractors, agricultural employers and agricultural associations comply with worker protection provisions applicable to migrant and seasonal agricultural workers who they recruit, solicit, hire, employ, furnish or transport or, in the case of migrant agricultural workers, to whom they provide housing. The Wage and Hour Division administers the requirements of MSPA. *Contact your local ESA **Wage and Hour Division** Office for more detail.*

The **Fair Labor Standards Act (FLSA)** contains special child labor regulations applicable to agricultural employment. The regulations administered and enforced by the Wage and Hour Division apply only to those establishments with employees (e.g., they do not apply to family-run and family-operated farms that do not hire outside workers). *Contact your local ESA **Wage and Hour Division** Office for more details.*

B. Mining

The goal of the **Federal Mine Safety and Health Act of 1977** is to improve working conditions in the nation's mines. This law strengthened an earlier coal mining law and brought metal and nonmetal miners under the same general protections as those afforded coal miners. Its provisions cover all miners and other persons employed to work on mine property. The Act is administered by the Labor Department's Mine Safety and Health Administration (MSHA).

Under the Act, the operators of mines, with the assistance of their employees, have the primary responsibility for ensuring the health and safety of the miners. MSHA is responsible for fully inspecting every underground mine at least four times a year and every surface mine at least twice a year to ensure that these responsibilities are met. MSHA also conducts training and provides technical assistance to the mining industry in the continuting effort to reduce deaths, serious injuries, and illnesses.

The Act established mandatory miners' training requirements and strengthened health protection measures and gassy mine safety programs. It also included tougher civil monetary penalties for safety or health violations by mine operators. In addition, the Act provided for closure of mines in cases of imminent danger to workers or failure to correct violations within the time allowed, and it called for greater involvement of miners and their representatives in processes affecting workers' health.

Each mine must be registered with MSHA. Many mine operators are required to submit plans to MSHA for approval before beginning operations. Such plans must be followed during mining. Required plans for underground coal mines cover operational aspects such as ventilation and roof control. Training plans are required for both underground and surface mines. Mine operators are also required to report each individual mine accident or injury to MSHA.

MSHA's Coal Mine Safety and Health Division enforces the law and the relevant regulations at more than 4,600 underground and surface coal mines. MSHA's Metal and Nonmetal Mine Safety and Health Division enforces federal requirements at more than 11,000 non-coal mines (including open pit mines, stone quarries, and sand and gravel operations).

Health and safety regulations developed and enforced by MSHA cover numerous hazards, including those associated with the following:

- exposure to respirable dust, airborne contaminants and noise;
- design, operation and maintenance requirements for mechanical equipment, including mobile equipment;
- roof falls, and rib and face rolls;
- flammable, explosive and noxious gases, dust and smoke;
- electrical circuits and equipment;
- fires;
- storage, transportation, and use of explosives;
- hoisting; and
- access and egress.

The **Black Lung Benefits Act (BLBA)** , part of the Federal Mine Safety and Health Act of 1977, provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung). The Act also provides for payments to certain family members of miners who died from, or are totally disabled because of pneumoconiosis. The Act is administered by ESA's Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation.

C. Construction

Several DOL agencies are involved in administering programs related to the construction industry:

- Under the **Occupational Safety and Health Act**, OSHA sets and enforces occupational safety and health standards specific to the construction industry.
- The **Davis-Bacon Act and related Acts** require most contractors and subcontractors on federally assisted construction contracts in excess of $2,000 to pay prevailing wage rates and fringe benefits as determined by the Secretary of Labor through the Wage and Hour Division of the Employment Standards Administration (ESA).
- Under **E.O. 11246**, ESA's Office of Federal Contract Compliance Programs has issued specific regulations on non-discrimination and affirmative action requirements for federal construction contractors and subcontractors.
- The "Anti-Kickback" section of the **Copeland Act** applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction or repair of any public building or public work -- except contracts for which the only federal assistance is a loan guarantee. This provision precludes a contractor or subcontractor from inducing an employee -- in any manner-- to give up any part of his/her compensation to which he/she is entitled.

D. Transportation

Many laws with labor provisions affecting the transportation industry are administered by agencies outside of the Department. For example, the Railway Labor Act is administered primarily by the **Department of Transportation** and the Railway Retirement Board. Special DOL programs for this industry include longshoring and maritime industry standards issued and enforced by OSHA under the **Occupational Safety and Health Act**.

SMALL BUSINESS HANDBOOK

Retirement and Health Benefit Standards

Employee Benefit Plans

DISCLAIMER

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Employee Retirement Income Security Act (ERISA),
(29 USC §1001 et seq., 29 CFR 2509 et seq.)

Who is Covered

The provisions of Title I of ERISA cover most private sector employee benefit plans. Employee benefit plans are voluntarily established and maintained by an employer, an employee organization, or jointly by one or more such employers and an employee organization. Pension plans--a type of employee benefit plan--are established and maintained to provide retirement income or to defer income until termination of covered employment or beyond. Other employee benefit plans are called welfare plans and are established and maintained to provide health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, day care centers, scholarship funds, apprenticeship and training benefits, or other similar benefits.

In general, ERISA does not cover plans established or maintained by governmental entities or churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.

Basic Provisions/Requirements

ERISA sets uniform minimum standards to assure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private pension and welfare plans. The Department's Pension and Welfare Benefits Administration (PWBA), together with the **Internal Revenue Service (IRS)** , carries out its statutory and regulatory authority to assure that workers receive the promised benefits. The Department has principal jurisdiction over **Title I of ERISA**, which requires persons and entities who manage and control plan funds to:

- Manage plans for the exclusive benefit of participants and beneficiaries;
- Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions expressly prohibited by law;
- Comply with limitations on certain plans' investments in employer securities and properties;
- Fund benefits in accordance with the law and plan rules;
- Report and disclose information on the operations and financial condition of plans to the government and participants;

- Provide documents required in the conduct of investigations to assure compliance with the law.

The Department also has jurisdiction over the prohibited transaction provisions of Title II of ERISA. However, the IRS administers the rest of Title II of ERISA, as well as the vesting, participation, nondiscrimination and funding standards of Title I of ERISA.

Reporting and Disclosure

Any individual or organization affected by ERISA may request an advisory opinion or information letter regarding the interpretation or application of the statutory provisions (or the implementing regulations, interpretive bulletins or exemptions) within the Department's jurisdiction. *ERISA Procedure 76-1*, 41 Federal Register 36281 (August 27, 1976), sets forth the procedures governing the advisory opinion process.

Part 1 of Title I requires the administrator of an employee benefit plan to furnish participants and beneficiaries with a summary plan description (SPD), describing in understandable terms, their rights, benefits and responsibilities under the plan. Plan administrators are also required to furnish participants with a summary of any material changes to the plan or changes to the information contained in the summary plan description. Copies of these documents are not required to be automatically filed with the Department, but must be furnished to the Department on request.

In addition, the administrator generally must file an annual report (Form 5500 Series) each year containing financial and other information concerning the operation of the plan. Plans with 100 or more participants file the **Form 5500**. Plans with fewer than 100 participants file the **Form 5500-C/R**; the form 5500-C at least every third year and the Form 5500-R, an abbreviated report, in the two intervening years. Plan administrators must furnish participants and beneficiaries with a summary of the information in the annual report.

Certain pension and welfare benefit plans may be exempt from the requirement to file an annual report. For example, welfare benefit plans with fewer than 100 participants that are fully insured or unfunded within the meaning of the Department's regulation at **29 CFR 2520.104-20** are not required to file an annual report.

The Department's regulations governing these reporting and disclosure requirements are set forth beginning at **29 CFR 2520.101-1**.

Fiduciary Standards

Part 4 of Title I sets forth standards and rules governing the conduct of plan fiduciaries. In general, persons who exercise discretionary authority or control over management of a plan or disposition of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with documents governing the plan, to the extent such documents are consistent with ERISA. Certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA and may trigger civil

monetary penalties under Title I of ERISA. Most of these transactions are also prohibited by the Internal Revenue Code ("Code"). The Code imposes an excise tax on "disqualified persons" -- whose definition generally parallels that of parties in interest -- who participate in such transactions.

Exemptions

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules and give the Departments of Labor and Treasury, respectively, authority to grant administrative exemptions and establish **exemption procedures**. Reorganization Plan No. 4 of 1978 transferred the authority of the Treasury Department over prohibited transaction exemptions, with certain exceptions, to the Labor Department.

The statutory exemptions generally include loans to participants, the provision of services necessary for operation of a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other State or Federal agencies. (See ERISA section 408 for the conditions of the exemptions.) Administrative exemptions may be granted by the Department on a class or individual basis for a wide variety of proposed transactions with a plan. Applications for individual exemptions must include, among other information:

- A detailed description of the exemption transaction and the parties for whom an exemption is requested;
- Reasons a plan would have for entering into the transaction;
- Percentage of assets involved in the exemption transaction;
- The names of persons with investment discretion;
- Extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction;
- Copies of all contracts, agreements, instruments and relevant portions of plan documents and trust agreements bearing on the exemption transaction;
- Information regarding plan participation in pooled funds when the exemption transaction involves such funds;
- Declaration, under penalty of perjury by the applicant, attesting to the truth of representations made in such exemption submissions;
- Statement of consent by third-party experts acknowledging that their statement is being submitted to the Department as part of an exemption application.

The Department's exemption procedures are set forth at **29 CFR 2570.30 through 2570.51**.

Enforcement

ERISA confers substantial **law enforcement responsibilities** on the Department. Part 5 of ERISA Title I gives the Department authority to bring a civil action to correct violations of the law, gives investigative authority to determine whether any person has violated Title I, and imposes criminal penalties on any person who willfully violates any provision of Part 1 of Title V.

Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104- 191,was enacted on August 21, 1996. HIPAA amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage provided in connection with employment. The HIPAA portability provisions relating to group health plans and health insurance coverage offered in connection with group health plans are set forth under a new Part 7 of Subtitle B of Title I of ERISA. These provisions include rules relating to preexisting conditions exclusions, special enrollment rights, and prohibition of discrimination against individuals based on health status- related factors.

Continuation of Health Coverage

Continuation of health care provisions were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and are codified in Part 6 of Title I of ERISA. These provisions apply to group health plans of employers with 20 or more employees on a typical working day in the previous calendar year. COBRA gives participants and beneficiaries the right to maintain, at their own expense, coverage under their health plan that would be lost due to a triggering event, such as termination of employment at a cost that is comparable to what it would be if they were still members of the employer's group. Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. The law also places notification obligations upon plan administrators, employers, and qualified beneficiaries with regard to certain “qualifying events.” In most instances of employee death, termination, reduced hours of employment, entitlement to Medicare, or bankruptcy, it becomes the employer's responsibility to provide a specific notice to the plan administrator. The plan administrator must then notify the qualified beneficiaries the opportunity to elect continuation coverage.

The Department's regulatory and interpretive jurisdiction over the COBRA provisions is limited to the COBRA notification and disclosure provisions.

Jurisdiction of the Internal Revenue Service

The IRS has regulatory and interpretive responsibility for all provisions of COBRA not under the Department's jurisdiction. In addition, ERISA provisions relating to participation, vesting, funding and benefit accrual, contained in parts 2 and 3 of Title I, are generally administered and interpreted by the Internal Revenue Service.

Assistance Available

PWBA has numerous **general publications** designed to assist employers and employees in understanding their obligations and rights under ERISA. A list of PWBA booklets and pamphlets is available by writing to: Publications Desk, PWBA, Division of Public Affairs, Room N-5656, 200 Constitution Ave., NW, Washington, DC 20210. Many of these documents are available via **PWBA’s homepage**.

Individualized assistance is offered by PWBA’s **national** and **field offices** for persons seeking information and assistance on benefits and rights under employee benefit plans. PWBA also issues advisory opinions and information letters in response to requests from individuals and organizations. Advisory opinions apply the law to a specific set of facts, while information letters merely call attention to well-established principles on interpretations. Further

information about these programs is contained in PWBA's booklet on "Customer Service Standards."

In addition, employee benefit plan documents and other materials are available from the PWBA Public Disclosure Room. This facility may be used to view and to obtain copies of materials on file. Materials include: summary plan descriptions, Form 5500 Series reports, Master Trust reports, 103-12 Investment Entity Reports, Common or Collective Trust or Pooled Separate Account direct filings, Apprentice and Other Training Plans notices, "Top Hat" plan statements, advisory opinions, exemptions, announcements and transcripts of public hearings and proceedings.

The PWBA Public Disclosure Room is open to the public Monday through Friday, from 8:30 a.m. to 4:30 p.m. Copies of materials are available at a cost of 15 cents per page by ordering in person or writing to: PWBA Public Disclosure Room, U.S. Department of Labor, Room N-5638, 200 Constitution Ave., NW, Washington, DC 20210. Given the complexity of ERISA requirements, employers may wish to seek the assistance of an attorney, CPA firm, investment or brokerage firm, and other employee benefit consultants in complying with the law.

Penalties

PWBA has authority under ERISA Section 502© to assess civil penalties for reporting violations and prohibited transactions involving a plan. A penalty of up to $1,000 per day may be assessed against plan administrators who fail or refuse to comply with annual reporting requirements. Section 502(l) gives the agency authority to assess civil penalties against parties in interest who engage in prohibited transactions with welfare and nonqualified pension plans. The penalty can range from five percent to 100 percent of the amount involved in a transaction. A parallel provision of the Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans. Finally, the Department is required under Section 502(l) to assess mandatory civil penalties equal to 20 percent of any amount recovered with respect to fiduciary breaches resulting from either a settlement agreement with the Department or a court order as the result of a lawsuit by the Department.

Relation to State, Local and Other Federal Laws

Part 5 of Title I provides that the provisions of ERISA Titles I and IV supersede State and local laws which "relate to" an employee benefit plan. ERISA, however, saves certain state and local laws from ERISA preemption, including state insurance regulation of multiple employer welfare arrangements (MEWAs). MEWAs generally constitute employee welfare benefit plans or other arrangements providing welfare benefits to employees of more than one employer, not pursuant to a collective bargaining agreement.

In addition, ERISA's general prohibitions against assignment or alienation of pension benefits do not apply to **qualified domestic relations orders**. Plan administrators must comply with the terms of orders made pursuant to State domestic relations law and award all or part of a participant's benefit in the form of child support, alimony, or marital property rights to an alternative payee (spouse, former spouse, child or other dependent). In addition, group health plans covered by ERISA must provide benefits in accordance with the applicable

requirements of qualified medical child support order issued under State domestic relations laws.

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U.S. Department of Labor

SMALL BUSINESS HANDBOOK

Safety and Health Standards

Child Labor (Nonagriculture)

DISCLAIMER

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Fair Labor Standards Act of 1938, as amended

(29 USC §201 et seq.; 29 CFR 570-580)

Who is Covered

The child labor provisions of the Fair Labor Standards Act (the Act) are designed to protect the educational opportunities of youths and prohibit their employment in jobs and under conditions detrimental to their health and well-being.

In nonagriculture, the child labor provisions apply to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce. For most firms, an annual dollar volume of business test of not less than $500,000 applies. The following are covered by the Act regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools and institutions of higher education; and federal, state and local government agencies.

Employees of firms that do not meet the $500,000 annual dollar volume test may be individually covered in any workweek in which they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity which is closely related and directly essential to the production of such goods.

An enterprise that was covered by the Act on March 31, 1990, and ceased to be covered because of the increase in the annual dollar volume test to $500,000 as required under the 1989 amendments to the Act, remains subject to the Act's child labor provisions.

Sixteen is the minimum age for most nonfarm work, however, 14- and 15-year olds may be employed outside of school hours in certain occupations under certain conditions. Youths may, at any age: deliver newspapers; perform in radio, television, movies, or theatrical productions; work for their parents in their solely owned nonfarm businesses (except in mining, manufacturing, or in any other occupation declared hazardous by the Secretary of Labor); or gather evergreens and make evergreen wreaths.

Basic Provisions/Requirements

The Act's child labor provisions include restrictions on the hours of work and occupations for youths under age 16. These provisions also set forth 17 hazardous occupations orders for jobs declared by the Secretary of Labor to be too dangerous for minors under age 18 to perform. The Act prohibits the shipment of goods in interstate commerce which were produced in

violation of the child labor provisions. It is also a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act.

The permissible jobs and hours of work, by age, in nonfarm work are as follows:

- Youths 18 years or older may perform any job for unlimited hours;
- Youths age 16 and 17 may perform any job not declared hazardous by the Secretary of Labor, for unlimited hours;
- Youths age 14 and 15 may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. In addition, they may not begin work before 7 a.m. nor work after 7 p.m., except from June 1 through Labor Day, when evening hours are extended until 9 p.m. Youths aged 14 and 15 who are enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Detailed information on the occupations determined to be hazardous by the Secretary is available by contacting the **Wage and Hour Division offices**.

Department of Labor regulations require employers to keep records of the date of birth of employees under age 19, their daily starting and quitting times, daily and weekly hours worked, and their occupation. Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each youth employed to show that the youth is the minimum age for the job. Certificates issued under most state laws are acceptable for this purpose.

Assistance Available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the **Wage and Hour Division offices**.

Penalties

Employers are subject to a civil money penalty of up to $10,000 for each employee employed in violation of the child labor provisions. When a civil money penalty is assessed, employers have the right, within 15 days of receipt of the notice of such penalty, to file an exception to the determination. When an exception is filed, it is referred to an administrative law judge for a hearing and determination as to the appropriateness of the penalty. Either party may appeal the decision of the administrative law judge to the Secretary of Labor. If an exception is not timely filed, the penalty becomes final.

The Act also provides, in the case of a conviction for a willful violation, for a fine of up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000 and imprisonment for up to six months, or both. The Secretary of Labor may also bring suit to obtain injunctions to restrain persons from violating the Act.

Relation to State, Local and Other Federal Laws

Many states have child labor laws. When both this Act and a state law apply, the law setting the higher standards must be observed.

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SMALL BUSINESS HANDBOOK

Safety and Health Standards

Occupational Safety and Health

DISCLAIMER

Updated: November 1997

The Occupational Safety and Health Act of 1970 (OSH Act)

(29 U.S.C. §651 et seq.; 29 CFR 1900 to end)

Who is Covered

In general, coverage of the Act extends to all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and all other territories under federal government jurisdiction. Coverage is provided either directly by the Federal **Occupational Safety and Health Administration (OSHA)** or through an OSHA-approved state occupational safety and health program.

As defined by the Act, an employer is any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." Therefore, the Act applies to employers and employees in such varied fields as manufacturing, construction, longshoring, agriculture, law and medicine, charity and disaster relief, organized labor and private education. Such coverage includes religious groups to the extent that they employ workers for secular purposes.

The following are not covered by the Act:

- Self-employed persons;
- Farms at which only immediate members of the farmer's family are employed;
- Working conditions regulated by other federal agencies under other federal statutes. This category includes most employment in mining, nuclear energy and nuclear weapons manufacture, and many segments of the transportation industries;
- Employees of State and local governments (unless they are in one of the **States** with OSHA-approved safety and health programs).

Other federal agencies are sometimes authorized to regulate safety and health working conditions in a particular industry; if they do not do so in specific areas, then OSHA requirements apply.

Basic Provisions/Requirements

The Act assigns to OSHA two principal functions: setting standards and conducting workplace inspections to ensure that employers are complying with the standards and providing a safe and healthful workplace. OSHA standards may require that employers adopt certain practices, means, methods or processes reasonably necessary to protect workers on the job. It is the responsibility of employers to become familiar with standards applicable to their establishments, to eliminate hazardous conditions to the extent possible, and to comply with

the standards. Compliance may include ensuring that employees have and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that are applicable to their own actions and conduct.

Even in areas where OSHA has not promulgated a standard addressing a specific hazard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause of the Act [Section 5(a)(1)] states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

States with OSHA-approved job safety and health programs must set standards that are at least as effective as the equivalent federal standard. Most of the state-plan states adopt standards identical to the federal ones (two states, New York and Connecticut, have plans which cover only public sector employees).

Federal OSHA Standards

Standards fall into four major categories: general industry (**29 CFR 1910**), construction (**29 CFR 1926**), maritime - shipyards, marine terminals, longshoring (**29 CFR 1915-19**), and agriculture (**29 CFR 1928**).

Each of these four categories of standards imposes requirements that are targeted to that industry, although in some cases they are identical across industries. Among the standards that impose similar requirements on all industry sectors are those for access to medical and exposure records, personal protective equipment, and hazard communication.

- **Access to Medical and Exposure Records**: This standard requires that employers grant employees access to any of their medical records maintained by the employer and to any records the employer maintains on the employees' exposure to toxic substances.
- **Personal Protective Equipment:** This standard, included separately in the standards for each industry segment (except agriculture), requires that employers provide employees, at no cost to employees, with personal protective equipment designed to protect them against certain hazards. This can range from protective helmets to prevent head injuries in construction and cargo handling work, to eye protection, hearing protection, hard-toed shoes, special goggles (for welders, for example) and gauntlets for iron workers.
- **Hazard Communication**: This standard requires that manufacturers and importers of hazardous materials conduct a hazard evaluation of the products they manufacture or import. If the product is found to be hazardous under the terms of the standard, containers of the material must be appropriately labeled and the first shipment of the material to a new customer must be accompanied by a material safety data sheet (MSDS). Employers, using the MSDSs they receive, must train their employees to recognize and avoid the hazards the materials present.

In general, all employers (except those in the construction industry) should be aware that any hazard not covered by an industry-specific standard may be covered by a general industry standard; in addition, all employers must keep their workplaces free of recognized hazards

that may cause death or serious physical harm to employees, even if OSHA does not have a specific standard or requirement addressing the hazard. This coverage becomes important in the enforcement aspects of OSHA's work.

Other types of requirements are imposed by regulation rather than by a standard. OSHA regulations cover such items as recordkeeping, reporting and posting.

- **Recordkeeping:** Every employer covered by OSHA who has more than 10 employees, except for certain low-hazard industries such as retail, finance, insurance, real estate, and some service industries, must maintain OSHA-specified records of job-related injuries and illnesses. There are two such records, the OSHA Form 200 and the OSHA Form 101.

  The OSHA Form 200 is an injury/illness log, with a separate line entry for each recordable injury or illness (essentially those work-related deaths, injuries and illnesses other than minor injuries that require only first aid treatment and that do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job). A summary section of the OSHA Form 200, which includes the total of the previous year's injury and illness experience, must be posted in the workplace for the entire month of February each year.

  The OSHA Form 101 is an individual incident report that provides added detail about each individual recordable injury or illness. A suitable insurance or workers' compensation form that provides the same details may be substituted for the OSHA Form 101.

  Unless an employer has been selected in a particular year to be part of a national survey of workplace injuries and illnesses conducted by the Department of Labor's **Bureau of Labor Statistics (BLS)** , employers with ten or fewer employees or employers in traditionally low-hazard industries are exempt from maintaining these records; all employers selected for the BLS survey must maintain the records. Employers so selected will be notified before the end of the year to begin keeping records during the coming year, and technical assistance on completing these forms is available from the state offices which select these employers for the survey.

  Industries designated as traditionally low hazard include: automobile dealers; apparel and accessory stores; furniture and home furnishing stores; eating and drinking places; finance, insurance, and real estate industries; and service industries, such as personal and business services, legal, educational, social and cultural services and membership organizations.

- **Reporting**: In addition to the reporting requirements described above, each employer, regardless of number of employees or industry category, must report to the nearest OSHA office within 8 hours of any accident that results in one or more fatalities or hospitalization of three or more employees. Such accidents are often investigated by OSHA to determine what caused the accident and whether violations of standards contributed to the event.

Employee Rights

Employees are granted several important rights by the Act. Among them are the right to: complain to OSHA about safety and health conditions in their workplace and have their identity kept confidential from the employer, contest the time period OSHA allows for correcting standards violations, and participate in OSHA workplace inspections.

Anti-Discrimination Provisions

Private sector employees who exercise their rights under OSHA can be protected against employer reprisal, as described in **Section 11(c) of the OSH Act**. Employees must notify OSHA within 30 days of the time they learned of the alleged discriminatory action. This notification is followed by an OSHA investigation. If OSHA agrees that discrimination has occurred, the employer will be asked to restore any lost benefits to the affected employee. If necessary, OSHA can take the employer to court. In such cases, the worker pays no legal fees.

Assistance Available

Copies of Standards

The *Federal Register* is one of the best sources of information on standards, since all OSHA standards are published there when adopted, as are all amendments, corrections, insertions or deletions. The *Federal Register*, published five days a week, is available in many public libraries. Annual subscriptions are available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402. OSHA also provides copies of its **Federal Register notices** on its website.

Each year the Office of the *Federal Register* publishes all current regulations and standards in the Code of Federal Regulations (CFR), available at many public libraries and from GPO. OSHA's regulations and standards are collected in several volumes in **Title 29 CFR, Parts 1900-1999**. OSHA's regulations and standards are also available through the Internet on **OSHA's page on standards**. OSHA also has a **compliance assistance section** on its website**.** For a reasonable price, **GPO** offers a data text-retrieval package in CD- ROM format that contains all OSHA standards, compliance directives and standards interpretations.

Since states with OSHA-approved job safety and health programs adopt and enforce their own standards under state law, copies of these standards can be obtained from the individual **states**.

Training and Education

OSHA's field offices (more than 70) are full-service centers offering a variety of informational services such as publications, technical advice, audio-visual aids on workplace hazards, and lecturers for speaking engagements.

The OSHA Training Institute in Des Plaines, Illinois, provides basic and advanced training and education in safety and health for federal and state compliance safety and health officers; state consultants; other federal agency personnel; and private sector employers, employees and their representatives. Institute courses cover topics such as electrical hazards, machine guarding, ventilation and ergonomics. The Institute facility includes classrooms, laboratories, a library and an audio-visual unit. The laboratories contain various demonstrations and

equipment, such as power presses, woodworking and welding shops, a complete industrial ventilation unit, and a noise demonstration laboratory. Sixty-one courses are available for students from the private sector dealing with subjects such as safety and health in the construction industry and methods of voluntary compliance with OSHA standards.

OSHA also provides funds to nonprofit organizations to conduct workplace training and education. OSHA annually identifies areas of unmet needs for safety and health education in the workplace and invites grant applications to address these needs. The Training Institute is OSHA's point of contact for learning about the many valuable training products and materials developed under such grants.

Organizations awarded grants use the funds to develop training and educational programs, reach out to workers and employers for whom their program is appropriate, and provide these programs to employers and employees.

Grants are awarded annually. Grant recipients are expected to contribute 20 percent of the total grant cost.

While OSHA does not distribute grant materials directly, it will provide addresses and phone numbers of contact persons from whom the public can order such materials for its use. However, OSHA does provide limited lending of grant-produced audiovisual training programs through the Resource Center Audiovisual Circulation Project. Contact the OSHA Training Institute at (708) 297-4810.

Consultation Assistance

Consultation assistance is available to employers who want help in establishing and maintaining a safe and healthful workplace. Largely funded by OSHA, the service is provided at no cost to the employer, and is available in every State and territory.

Primarily targeted for smaller employers with more hazardous operations, the consultation service is delivered by state government agencies or universities employing professional safety consultants and health consultants. On-site OSHA consultation assistance includes an opening conference with the employer to explain the ground rules for consultation, a walk through the workplace to identify any specific hazards and to examine those aspects of the employer's safety and health program which relate to the scope of the visit, and a closing conference followed by a written report to the employer of the consultant's findings and recommendations.

This process begins with the employer's request for consultation and the commitment to correct any serious job safety and health hazards identified by the consultant. Possible violations of OSHA standards will not be reported to OSHA enforcement staff unless the employer fails or refuses to eliminate or control worker exposure to any identified serious hazard or imminent danger situation. In such unusual circumstances, OSHA may investigate and begin enforcement action. Employers must also agree to allow the consultant to freely confer with employees during the on-site visit.

Additional information concerning consultation assistance, including a directory of OSHA-funded consultation projects, can be obtained by requesting OSHA publication No. 3047, **Consultation Services for the Employer**.

Voluntary Protection Program (application and information)

The **Voluntary Protection Program (VPP)** is one of many OSHA initiatives aimed at extending worker protection beyond the minimum required by OSHA standards. This program, along with others such as expanded on-site consultation services and full-service area offices, is a cooperative approach which, when coupled with an effective enforcement program, expands worker protection to help meet the goals of the Occupational Safety and Health Act of 1970.

The VPP is designed to:

- Recognize outstanding achievement of those who have successfully incorporated comprehensive safety and health programs into their total management system;
- Motivate others to achieve excellent safety and health results in the same outstanding way; and,
- Establish a relationship between employers, employees, and OSHA that is based on cooperation rather than coercion.

OSHA reviews an employer's VPP application and conducts an on-site review to verify that the safety and health program described is in operation at the site. Evaluations are conducted on a regular basis, annually for Merit and Demonstration programs, and triennially for Star programs. All participants must send their injury information annually to their OSHA regional office. Sites participating in the VPP are not scheduled for programmed inspections; however, any employee complaints, serious accidents or significant chemical releases that may occur are handled according to routine enforcement procedures.

An employer may make application for the Program at the nearest **OSHA regional office** . Once OSHA is satisfied that, on paper, the employer qualifies for the program, an onsite review will be scheduled. The review team presents its findings in a written report for the company's review prior to submission to the Assistant Secretary, who heads OSHA. If approved, the employer receives a letter from the Assistant Secretary informing the site of its participation in the VPP. A certificate of approval and flag are presented at a ceremony held at or near the approved worksite. Star sites receiving re-approval after each triennial evaluation receive plaques at similar ceremonies.

The VPP is available in states under federal jurisdiction. Some states with their own safety and health programs have similar programs. Interested companies in these states should contact the appropriate **state agency** for more information.

Information Sources

Information about state programs, VPP, consultation programs, and inspections can be obtained from the nearest **OSHA regional, area, or district office**. Area offices are listed in local phone directories under U.S. Government listings for the U.S. Department of Labor. OSHA's Public Service Plan, published in September 1994, is a good source for these phone numbers. Copies are available from the OSHA Publications Office, whose address, telephone and facsimile number in the paragraph below.

The **OSHA Home Page** contains information on other OSHA activities, statistics, media releases, technical assistance, and links to other safety and health Internet sites. OSHA has developed **interactive software** to assist employers in complying with OSHA's cadmium, confined spaces, and asbestos standards.

A single free copy of an OSHA catalog, OSHA 2019, "OSHA Publications and Audiovisual Programs," may be obtained by mailing a self-addressed mailing label to the OSHA Publications Office, Room N3101, U.S. Department of Labor, Washington, DC 20210; telephone (202) 219-4667; facsimile (202)219-9266. Descriptions of and ordering information for all OSHA publications and audiovisual programs are contained in this catalog.

A variety of information is available on OSHA's **Publications** website , including on-line publication order forms, the OSHA poster, guidance on OSHA recordkeeping, and on-line access to several OSHA publications in PDF format.

Questions about OSHA programs, the status of ongoing standards-setting activities, and general inquiries about OSHA may be addressed to the OSHA Office of Information & Consumer Affairs, Room N3637, U.S. Department of Labor, Washington, DC 20210; telephone (202) 219-8151.

Penalties (Inspections and Citations)

Workplace Inspections

To enforce its standards, OSHA is authorized under the Act to conduct workplace inspections. Every establishment covered by the Act is subject to inspection by OSHA compliance safety and health officers (CSHOs) who are chosen for their knowledge and experience in the occupational safety and health field. CSHOs are thoroughly trained in OSHA standards and in the recognition of safety and health hazards. Similarly, states with their own occupational safety and health programs conduct inspections using qualified state CSHOs.

OSHA conducts two general types of inspections: programmed and unprogrammed. There are various **OSHA publications and documents** which describe in detail OSHA's inspection policies and procedures. Unprogrammed inspections respond to fatalities, catastrophes and complaints, the last of which is further detailed in OSHA's **complaint policies and procedures**.

The following are the types of violations that may be cited and the penalties that may be proposed:

- **Other-Than-Serious Violation**: A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to $7,000 for each violation is discretionary. A penalty for an other-than-serious violation may be adjusted downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business. When the adjusted penalty amounts to less than $50, no penalty is proposed.

- **Serious Violation**: A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A mandatory penalty of up to $7,000 for each violation is proposed. A penalty for a serious violation may be adjusted downward, based on the employer's good faith, history of previous violations, the gravity of the alleged violation, and size of business.

- **Willful Violation**: A violation that the employer intentionally and knowingly commits. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition exists and has made no reasonable effort to eliminate it.

  The Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than $70,000 but not less than $5,000 for each violation. A proposed penalty for a willful violation may be adjusted downward, depending on the size of the business and its history of previous violations. Usually no credit is given for good faith.

  If an employer is convicted of a willful violation of a standard that has resulted in the death of an employee, the offense is punishable by a court-imposed fine or by imprisonment for up to six months, or both. A fine of up to $250,000 for an individual, or $500,000 for a corporation [authorized under the Comprehensive Crime Control Act of 1984 (1984 CCA), not the OSH Act], may be imposed for a criminal conviction.

- **Repeated Violation**: A violation of any standard, regulation, rule or order where, upon reinspection, a substantially similar violation is found. Repeated violations can bring a fine of up to $70,000 for each such violation. To be the basis of a repeat citation, the original citation must be final; a citation under contest may not serve as the basis for a subsequent repeat citation.

- **Failure to Correct Prior Violation**: Failure to correct a prior violation may bring a civil penalty of up to $7,000 for each day the violation continues beyond the prescribed abatement date.

Additional violations for which citations and proposed penalties may be issued are as follows:

- Falsifying records, reports or applications can bring a fine of $10,000 or up to six months in jail, or both;

- Assaulting a compliance officer, or otherwise resisting, opposing, intimidating, or interfering with a compliance officer in the performance of his or her duties is a criminal offense, subject to a fine of not more than $250,000 for an individual and $500,000 for a corporation (1984 CCA) and imprisonment for not more than three years.

Citation and penalty procedures may differ somewhat in states with their own occupational safety and health programs.

Appeals Process

- **Appeals by Employees**: If an inspection was initiated as a result of an employee complaint, the employee or authorized employee representative may request an informal

review of any decision not to issue a citation.

Employees may not contest citations, amendments to citations, penalties or lack of penalties. They may contest the time in the citation for abatement of a hazardous condition. They also may contest an employer's Petition for Modification of Abatement (PMA) which requests an extension of the abatement period. Employees must contest the PMA within 10 working days of its posting or within 10 working days after an authorized employee representative has received a copy.

Within 15 working days of the employer's receipt of the citation, the employee may submit a written objection to OSHA. The OSHA area director forwards the objection to the Occupational Safety and Health Review Commission, which operates independently of OSHA.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty or employer's notice of intention to contest.

- **Appeals by Employers**: When issued a citation or notice of a proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. Employee representatives may be invited to attend the meeting. The area director is authorized to enter into settlement agreements that revise citations and penalties to avoid prolonged legal disputes.

- **Notice of Contest**: If the employer decides to contest either the citation, the time set for abatement, or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received in which to notify the OSHA area director in writing. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

  There is no specific format for the Notice of Contest; however, it must clearly identify the employer's basis for contesting the citation, notice of proposed penalty, abatement period, or notification of failure to correct violations.

  A copy of the Notice of Contest must be given to the employees' authorized representative. If any affected employees are not represented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace, or else served personally upon each unrepresented employee.

Appeal Review Procedure

If the written Notice of Contest has been filed within the required 15 working days, the OSHA area director forwards the case to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an administrative law judge.

The judge may disallow the contest if it is found to be legally invalid, or a hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not require that they be

represented by attorneys.

Once the administrative law judge has ruled, any party to the case may request a further review by OSHRC. Any of the three OSHRC commissioners also may individually move to bring a case before the Commission for review. Commission rulings may be appealed to the appropriate U.S. Court of Appeals.

Appeals In State-Plan States

States with their own occupational safety and health programs have a state system for review and appeal of citations, penalties, and abatement periods. The procedures are generally similar to Federal OSHA's, but cases are heard by a state review board or equivalent authority.

Relation to State, Local and Other Federal Laws

The agency covers all working conditions that are not covered by safety and health regulations of another federal agency under other legislation. Industries where such regulations frequently apply include most transportation industries (rail, air and highway safety are under the **Department of Transportation**), nuclear industries (covered either by the **Department of Energy** or the **Nuclear Regulatory Commission**) and mining (covered by the Department of Labor's **Mine Safety and Health Administration**, and discussed elsewhere in this **publication**). OSHA also has the authority to monitor the safety and health of federal employees. It is the goal of all federal agencies to make their requirements compatible with those of Federal OSHA and to avoid conflicts and duplication.

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Safety and Health Standards

Mine Safety and Health

DISCLAIMER

Updated: November 1997

The Federal Mine Safety and Health Act of 1977 (the Mine Act)

(P.L. 91-173 as amended by P.L. 95-164; 30 CFR 1-199)

Who is Covered

Coverage of the Mine Act extends to all mine operators and miners throughout the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands. Under the Mine Act, a mine "operator" is defined as: "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing service or construction at such mine." A "miner" is any individual working in a coal or other mine. At this time, there are approximately 350,000 miners and almost 15,600 mines covered by the Mine Act.

Basic Provisions/Requirements

The Mine Act requires that the **Mine Safety and Health Administration (MSHA)** perform a minimum number of inspections at all mines on an annual basis. All underground mines are to receive four inspections annually; all surface operations are to beinspected twice annually. Additional inspection and investigation activities are also required or authorized by the Mine Act in order to ensure a safe and healthful work environment for the Nation's miners. For example, mines which liberate large amounts of methane gas are to receive more frequent inspections; mines which are determined to be exceptionally hazardous may receive more frequent inspections. MSHA must investigate all fatal accidents and complaints of discrimination. In conducting its activities, MSHA is specifically prohibited from giving advance notice of an inspection event, and is specifically authorized warrant-less right of entry onto mine property.

In order to promote compliance with the provisions of the Act and the safety and health standards, all violations found during inspections and investigations must be cited; all violations are subject to civil penalties; and all violations must be corrected within the time frame established by MSHA. The Mine Act also permits representatives of the operator and the miners to accompany MSHA during the inspection and participate in pre- and post-inspection conferences. During the post-inspection conferences, if there are citations, the circumstances surrounding the cited violations are discussed. If these discussions do not result in resolution, mine operators may appeal the citation and the penalty to the Federal Mine Safety and Health Review Commission, an independent, administrative adjudicatory body. Further appeals may be made to the U.S. Courts of Appeals.

MSHA's standards and regulations stem from the requirements of the Mine Act. In addition to the safety and health standards developed to prevent the occurrence of hazardous conditions,

MSHA's regulations establish the requirements for immediate notification of accidents, injuries and illnesses; for training programs which meet the statutory requirements of the Mine Act; and for obtaining approval for certain equipment used in gassy underground mines. Mine operators are also required to notify MSHA of the opening or closing of a mine, and may request the modification of an existing safety standard on a site-by-site basis. Under the Mine Act, modifications may be approved only if MSHA determines that the alternate method proposed will guarantee no less than the same measure of protection afforded by the existing standards, or that the application of MSHA's standard at the mine will result in a diminution of safety for miners.

Assistance Available

MSHA develops **safety and health training programs** in cooperation with industry and labor, tests new mining equipment, works with other agencies to advance safety and health research programs, and compiles and analyzes accident, injury and illness data to better address serious **workplace hazards**. MSHA has developed specific booklets, pamphlets and pocket-size laminated cards which address known safety and health hazards and identify acceptable **compliance processes or procedures**. MSHA routinely distributes its accident prevention materials to the mining industry at large, or to those sectors of the industry which are experiencing the injuries addressed by the materials.

The Mine Act authorizes a **state grants program**, funded at about $5 million annually, which is administered by MSHA. MSHA has been working with the states to stimulate the development of individual state programs which focus on identifiable safety and health problems. Many of the states use the grants in the education and training area, particularly for smaller mining operations which do not have the ability to provide updated, effective training.

MSHA's **Mine Health and Safety Academy**, located in Beckley, West Virginia, develops and provides safety and health training courses used by MSHA to train and develop inspectors, and also by industry and labor. A "Mine Simulation Laboratory" is located on the Academy grounds which provides hands-on training in rescue and recovery operations in certain mine emergency situations.

MSHA's Approval and Certification Center (A&CC), located near Wheeling, West Virginia, houses the necessary laboratories, equipment and personnel to test equipment which must be approved before it can be used in certain areas of gassy underground mines. The A&CC is also responsible for monitoring the performance of approved products to assume they meet the standards under which they were originally approved.

A variety of information on MSHA's programs, as well as MSHA's existing and proposed standards, can be accessed on the Internet on **MSHA's homepage** or on **OSHA's CD Rom**.

MSHA also maintains two toll-free numbers which can be used to report accidents if the appropriate district or subdistrict phone number cannot be reached. The toll-free numbers to report safety and health concerns are (800) 746-1554 and (800) 746-1553.

Additional information about MSHA, its programs and policies may be obtained from the MSHA Office of Information, Room 601, 4015 Wilson Boulevard, Arlington, Virginia, 22203. The telephone number is (703) 235-1452. Also see the listing of local **MSHA offices**.

Penalties

The Mine Act established a maximum penalty of $10,000 per violation against mine operators for violations found and cited. As a result of the Omnibus Budget Reconciliation Act of 1990, the maximum was increased to $50,000.

Non-serious violations (violations that are not designated "significant and substantial") which are promptly corrected normally receive a "single penalty" assessment of $50. More serious violations and non-serious violations that are not promptly corrected are usually assessed using a formula that incorporates six criteria specified for determining penalty amounts by the Mine Act. Some violations are of such a nature or seriousness that the regular formula would not produce an appropriate penalty. In such cases -- most often involving fatalities, serious injuries, unwarrantable failure to comply with standards, or a failure to report accidents, injuries, illnesses, or employment and production at a mine -- MSHA may waive the formula and propose a "special assessment." In developing such an amount, an independent review of the facts is made to determine a penalty amount which will have the deterrent effect contemplated by the statute. **Title 30, Part 100 of the Code of Federal Regulations** contains the regulations which govern the civil penalty process.

The Mine Act also provides for either civil penalties against individuals for "knowing" violations, or criminal sanctions against mine operators who "willfully" violate safety and health standards. Under Agency policy, particular citations and orders are reviewed for possible knowing or willful violations. In general, the violations which are reviewed include those involving imminently dangerous situations and a high degree of negligence or reckless disregard. MSHA initiates and conducts investigations of possible knowing or willful violations. If evidence of willful violations is found, the case is referred to the Department of Justice.

Relation to State, other Federal and Local Laws

The Mine Act does not give MSHA the authority to cede its responsibilities to states or any other political subdivision. The Mine Act does not preempt state mine safety and health laws, except insofar as they may be in conflict with the Mine Act or MSHA's regulations. States may have more stringent health and safety standards

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Safety and Health Standards

Black Lung Benefits

DISCLAIMER

Updated: November 1997

Black Lung Benefits Act (Title IV, Federal Mine Safety And Health Act of 1977, As Amended)

(Title 30, USC, Sections 901 et seq.; 20 CFR 718, 722, 725, 726, 727)

Who is Covered

The Black Lung Benefits Act (BLBA) provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung) arising from employment in or around the nation's coal mines, augmented payments based on the number of the miner's dependents, and payments to certain survivors of miners who died due to or while totally disabled from pneumoconiosis. All coal mine operators are required to pay an excise tax, based on their tonnage and price of coal sold, to support payment of benefits to miners under the Act and to pay for the cost of administering the Act. In addition, coal mine operators are required, either directly or through insurance, to provide for the payment of benefits to miners when they are the responsible employer of the miners. For purposes of determining responsibility for payment of benefits, a coal mine operator includes: (1) any owner, lessee or other person who operates, controls, or supervises a coal mine or preparation plant, or (2) any independent contractor performing services or construction at a mine, or (3) companies transporting coal from mines to preparation plants.

Basic Provisions/Requirements

Present and former coal miners (including certain coal transportation and coal mine construction workers who were exposed to coal mine dust), and their surviving dependents, including surviving spouses, orphaned children, and totally dependent parents, brothers and sisters, may file claims for black lung benefits.

If eligible, the basic monthly benefit as of January 1, 1997, for a totally disabled miner or his/her surviving spouse is $445.10 per month. This may be increased to a maximum of $890.20 per month for claimants with three or more qualified dependents. Benefit payments are reduced by the amounts received for pneumoconiosis under State workers' compensation awards and by excess earnings in some cases. Benefit payments are adjusted periodically in accordance with the percentage increase in Federal pay rates. Medical payments are limited to the treatment of conditions directly related to black lung disease and only totally disabled former miners can qualify for this benefit. Certain medical, surgical and other treatments are covered such as hospital, nursing, rehabilitation services, drugs and equipment.

The Black Lung Disability Trust Fund pays the cost of black lung claims: 1) where the miner's last coal mine employment was before January 1, 1970, or 2) where no responsible coal mine operator has been identified in claims where the miner's last coal employment was after December 31, 1969, or 3) where the responsible coal mine operator has defaulted on the

payment of such benefits. Coal mine operators identified as responsible for claims based on employment after 1970 must provide for the required benefits either directly or through insurance. The Trust Fund is supported by a tax paid by coal mine operators on each ton sold. The current rate is $1.10 per ton for underground-mined coal and $.55 for surface-mined coal, subject to a cap of 4.4 percent of the sales price.

Coal mine operators may secure payment of benefits for which they are liable by either qualifying as a self-insurer or by obtaining insurance through a commercial insurance carrier or a State agency. Operators must obtain approval from the Department of Labor to become a self-insurer. To qualify, they must, among other things, have been in the business of coal mining for at least three years, demonstrate the ability to service black lung claims and agree to service claims in a timely manner, meet minimum asset requirements, and obtain an indemnity bond or post other security to secure payment of benefits. Operators may appeal a denial to self-insure to the Department. When operators obtain commercial insurance, their obligations with regard to payment of benefits and provision of medical treatment are binding on the insurance carriers.

Coal mine operators are required to commence payment of benefits within 30 days of a final determination of their liability for the benefits. Where payment is made from the Trust Fund pending appeal of a claim and final determination, operators must reimburse the Trust Fund.

Assistance Available

To obtain additional information, contact the nearest Department of Labor **Black Lung district office**. These offices are listed in the local telephone books under U.S. Government, Department of Labor, Employment Standards Administration, **Office of Workers' Compensation Programs**, Division of Coal Mine Workers' Compensation.

Questions concerning **insurance and self-insurance requirements** should be addressed to:

Mr. Howard Miller
ESA/OWCP/DCMWC
Responsible Operator Section
Room C-3526
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
Phone: 202-219-6432

Penalties

The Department may suspend or revoke the authority to self-insure due to operators' failure to comply with the Act and its regulations, the insolvency of their surety on an indemnity bond; or impairment of operators' financial responsibility. Revocation of the authority to self-insure or the failure to obtain insurance does not relieve operators of liability for payment of benefits and provision of medical treatment. Operators who fail to secure insurance may be subject to a civil money penalty of up to $1,000 for each day insurance is not in effect.

If an employee or his/her survivors or an employer disagree with a claim determination by the

Division of Coal Mine Workers' Compensation, a formal hearing may be requested before an administrative law judge. Appeal of the administrative law judge's decision may be taken to the Benefits Review Board. Subsequent appeal from the Benefits Review Board may be taken to the U.S. Court of Appeals and finally to the United States Supreme Court.

The failure of operators to pay benefits for which they have been determined liable or to reimburse the Trust Fund may result in a lien being placed against their property. The Department may also seek an injunction in U.S. District Court to insure that such obligations are met and to prevent future noncompliance. Operators are also subject to paying interest on the benefit payments or Trust Fund reimbursements owed, as well as possible assessment of an additional 20 percent of the amount due, which is payable to the claimant.

Operators who knowingly conceal or dispose or any property in order to avoid the payment of benefits under the Act may be guilty of a misdemeanor and, if convicted, subject to a fine of $1,000, imprisonment for up to one year, or both.

Relation to State, Local and other Federal Laws

The Federal black lung benefits are offset by State workers' compensation benefits for the same disease. If the amount paid under the State program is less than the amount the Federal black lung program has established for the claimant, then Federal black lung benefits cover the shortfall. Social Security disability benefits are also reduced by the amount of black lung benefits received.

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U.S. Department of Labor

SMALL BUSINESS HANDBOOK

Safety and Health Standards

Longshore and Harbor Workers

DISCLAIMER

Updated: November 1997

Longshore and Harbor Workers' Compensation Act

(Title 33, U.S.C., Sections 901 et seq.; 20 CFR 701-704

Who is Covered

The Longshore and Harbor Workers' Compensation Act (LHWCA), administered by the **Office of Workers' Compensation Programs** (OWCP), Employment Standards Administration, United States Department of Labor (DOL), provides forcompensation and medical care to employees disabled from injuries that occur on the navigable waters of the United States, or in adjoining areas customarily used in loading, unloading, repairing or building a vessel. The Act also offers benefits to dependents if the injury causes the employee's death. The term "injury" includes occupational disease arising out of employment.

The Act covers employees employed in a maritime occupation, including a longshore worker or other person in longshore operations, and any harbor worker, including a ship repairer, shipbuilder, and shipbreaker. Certain individuals are excluded by the Act if covered by a State workers' compensation law: office employees, certain retail and service employees, small vessel workers and individuals engaged in repairing certain recreational vessels, and masters or members of a crew of any vessel.

Employers of covered employees are responsible for insuring the payment of compensation and medical benefits to injured employees. This insurance is provided through private insurance carriers, or by employers who are authorized by the Department of Labor to become self-insured. While benefits in certain circumstances may be paid by a Special Fund administered by the Department of Labor, most benefits under the Longshore program are funded by the authorized insurance carriers and self-insured employers.

In addition to longshore and other maritime workers, the LHWCA covers a variety of other employees through the following extensions to the Act: The District of Columbia Workmen's Compensation Act (enacted in 1928 and repealed effective July 26, 1982) which provides benefits for employees in private employment in the District of Columbia who sustain injuries or illnesses as a result of employment prior to July 26, 1982 (workers injured after this date are provided for under a workers' compensation act administered by the District of Columbia Government); the Defense Base Act (1941) which covers employees of contractors with the United States outside the continental U.S., Alaska and Hawaii; the Nonappropriated Fund Instrumentalities Act (1952) which provides for benefits for civilian employees of Continental Shelf Lands Act (1953) which in turn provides coverage to employees of private industry conducting certain operations on the Outer Continental Shelf of the United States.

Basic Provisions/Requirements

An injured employee is eligible to receive compensation for disability at the rate of 66 2/3 percent of the employee's average weekly wage, subject to the specified maximum in effect at the time of injury, for as long as the effects of the injury continue. Compensation is also available for permanent impairment of specified limbs and organs and to replace loss of earning capacity. Benefits are paid to a widow or widower, or other eligible survivors, at the rate of 50 percent of the national average weekly wage as determined by the Secretary of Labor, applicable at the time of injury, or the employee's full wage, if less. The maximum compensation rate is 200 percent of the current national average weekly wage as determined by the Secretary of Labor, applicable at the time of injury, or the employee's full average weekly wage, whichever is less. As of October 1, 1996 minimums and maximums ranged from $170.54 to $682.14 a week.

Within 10 days from the date of an employee's injury or death, or 10 days from the date an employer has knowledge of an employee's injury or death, including any disease or death proximately caused by the employment, the employer must furnish a report to the deputy commissioner for the compensation district in which the injury or death occurred, and thereafter furnish additional or supplemental reports as the deputy commissioner may request.

No report is to be filed unless the injury causes the employee to lose one or more shifts from work. However, the employer must keep records containing the following specified information: (a) the name, address, and business of the employer; (b) the name, address, and occupation of the employee; (c) the cause, nature, and other relevant circumstances of the injury or death; (d) the year, month, day, and hour when, and the particular locality where, the injury or death occurred; and (e) such other information as the OWCP may require.

Every employer shall maintain adequate records of injuries sustained by employees, including information on the disease, other impairments or disabilities, or death relating to the injury. Such records must be made available for inspection by OWCP or by any State authority. Records should be retained by the employer for three years following the date of injury.

Employers are required to secure insurance for workers' compensation coverage under the Act either through an authorized insurance carrier or by obtaining approval to self-insure from OWCP. To obtain approval to self-insure, the employer must, among other things, furnish to OWCP proof of his/her ability to pay compensation directly. The OWCP also requires the deposit of security in the form either of an indemnity bond or negotiable securities.

Once insurance has been obtained, the employer may request a certificate from the deputy commissioner in the compensation district in which he/she has operations, showing that the employer has secured the payment of compensation.

Only one certificate will be issued to an employer in a compensation district, and it will be valid only during the period for which the employer has secured such payment. When an employer obtains insurance through a private insurance carrier, the obligation of the employer for payment of benefits and provision of medical benefits is binding on the insurance carrier.

The employer or insurance carrier must pay compensation payments periodically, promptly and directly to the person entitled to benefits under the Act.

An employer may apply to OWCP for an exemption to coverage by certifying a particular facility as one engaged in the building, repairing or dismantling of exclusively small vessels

and not receiving a Federal maritime subsidy. (Small vessels are defined as commercial barges which are under 900 lightship displacement tons (long) or a commercial tugboat, towboat, crewboat, supply boat, fishing vessel or other work vessel which is under 1,600 tons gross.) Once certified, injuries sustained at that facility would not be covered under the Act except for injuries which occur over the navigable waters of the United States, including any adjoining pier, wharf, dock, or facility over the land for launching vessels. A facility otherwise covered under the Act remains covered until certification of exemption is issued. This exemption from coverage is not intended to be used by employers whose facilities work on exclusively small vessels.

The special fund was established under the Act so that, under certain circumstances, the employer's liability is limited in the event an employee has pre-existing permanent partial disability; benefits are paid out of a special fund after 104 weeks. In order for this determination to be made, the employer must request limitation-of its liability and file a fully documented application with OWCP as soon as the claimant's condition becomes known or is an issue in dispute.

An employer may not discharge or in any manner discriminate against an employee because the employee has claimed or attempted to claim compensation or has participated in a proceeding under this Act. This prohibition does not prevent discharge or refusal to employ a person who has been found to have filed a fraudulent claim for compensation or otherwise having made a false statement or misrepresentation.

If an employee or his/her survivor(s), or an employer or insurance carrier disagrees with a recommendation of the Department, a formal hearing may be requested before an administrative law judge. Appeal from the Benefits Review Board decision may be taken to the U.S. Court of Appeals and finally to the United States Supreme Court.

Assistance Available

To obtain additional information, contact the nearest **District Office of the Office of Workers' Compensation Programs**. Offices are listed in local telephone books under U.S. Government, Department of Labor, Office of Workers' Compensation Programs. Further assistance can be obtained from OWCP's **Division of Longshore and Harbor Workers' Compensation**.

Penalties

If any installment of compensation payable without an award is not paid within 14 days after it becomes due, an additional 10 percent will be added to the unpaid installment. The additional 10 percent payment can be waived if the employer, after contacting OWCP, can provide an explanation as to why the installment payment was late. The employer must also contact OWCP whenever commencement or suspension of payments is made.

The OWCP may suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or regulations, failure or insolvency of the surety on his/her indemnity bond, or impairment of financial responsibility are deemed good causes for suspension or revocation.

Any employer who fails to secure coverage by authorized insurance carriers or by becoming an authorized self-insurer is subject, upon conviction, to a fine of not more than $10,000, or by imprisonment for not more than one year, or both.

Any employer who discriminates against an employee may be subject to a penalty of not less than $1,000 or more than $5,000, and may be required to restore that employee to his/her employment along with all wages lost due to the discrimination unless that employee has ceased to be qualified to perform the duties of the employment.

Relation to State, Local and Other Federal Laws

Compensation benefits received under other State of Federal compensation laws for the same injury are offset against benefits paid under the Act.

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